

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MARGARET BUDDE, Lead Plaintiff, and	§	
DANIEL REAM, Individually and on	§	
behalf of all others similarly situated,	§	
	§	
Plaintiffs,	§	
v.	§	Civil Action No. 3:15-CV-1679-M
	§	
GLOBAL POWER EQUIPMENT GROUP INC.,	§	
RAYMOND K. GUBA, and	§	
LUIS MANUEL RAMIREZ,	§	
	§	
Defendants.	§	

**DEFENDANT GLOBAL POWER’S RESPONSE TO LEAD PLAINTIFF’S MOTION TO
LIFT THE PSLRA’S AUTOMATIC DISCOVERY STAY FOR THE LIMITED PURPOSE
OF ORDERING A NON-PARTY WITNESS TO PRESERVE DOCUMENTS**

Defendant Global Power Equipment Group Inc. (“Global Power”) respectfully submits this response to Lead Plaintiff’s Motion to Lift the PSLRA’s Automatic Discovery Stay for the Limited Purpose of Ordering a Non-Party Witness to Preserve Documents [Dkt # 45, 46].

Global Power does not oppose the very limited relief sought by Lead Plaintiff. Global Power does wish to make the following three points:

1. As Plaintiff concedes, the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(b)(3)(B) (“PSLRA”) requires that discovery be stayed through the Court’s ruling on Defendants’ anticipated motion to dismiss Plaintiff’s Amended Complaint. The Court may lift the stay only if it “finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.” 15 U.S.C. § 78u-4(b)(3)(B) (emphasis added). For the reasons discussed below, Global Power asserts that Plaintiff has not satisfied that standard, even with respect to the limited relief sought. Plaintiff certainly has not

justified, or attempted to justify, any further or broader lifting of the stay, and Global Power reserves the right to oppose any such subsequent application.

2. By its motion, Plaintiff seeks to serve a document preservation subpoena on Global Power's former auditor BDO USA, LLP ("BDO"). Plaintiff professes to be concerned that BDO may destroy relevant documents pursuant to its "ordinary business practices." Plaintiff ignores that federal law already requires BDO to preserve all documents relevant to its audit for seven years. *See* 17 C.F.R. § 210.2-06 (requiring accounting firms to retain for seven years records relevant to their audits and reviews of issuers' financial statements). Insofar as BDO is already required to retain the documents Plaintiff is likely to be seeking, there is no need for the subpoena.
3. Finally, Plaintiff takes the opportunity to use her motion to put before the Court her own speculations about the significance of Global Power's recently announced change of auditor. Nothing in Global Power's March 24, 2016 Form 8-K, which Global Power submitted to the Court promptly upon its filing with the SEC, supports Plaintiff's conjecture. The time for the Court to assess the sufficiency of Plaintiff's allegations of securities fraud will come, and Global Power looks forward to addressing the inadequacies of Plaintiff's allegations at the appropriate time. In the meantime, it is not appropriate for Plaintiff to attempt to "poison the well" on this motion.

In sum, the relief Plaintiff seeks is unjustified and unwarranted. Nevertheless, because Plaintiff only seeks the preservation of documents, and those documents are already required to

be maintained by federal law, Global Power does not oppose the requested relief under the circumstances.

Respectfully submitted,

/s/ Scott L. Davis

Scott L. Davis
State Bar No. 05547030
Todd A. Murray
State Bar No. 00794350
Rachel Kingrey
State Bar No. 24068616
GARDERE WYNNE SEWELL LLP
1601 Elm St., Suite 3000
Dallas, TX 75201-4761
214.999.3000
Fax: 214.999.4667
sdavis@gardere.com
tmurray@gardere.com
rkingrey@gardere.com

David G. Januszewski
Admitted Pro Hac Vice
Cahill Gordon & Reindel LLP
80 Pine Street
New York, New York 10005
212.701.3352
Fax: 212.378.2200
djanuszewski@cahill.com

Bradley J. Bondi
Admitted Pro Hac Vice
Cahill Gordon & Reindel LLP
1990 K Street NW
Suite 950
Washington, DC 20006
202.862.8910
Fax: 866.836.0501
bbondi@cahill.com

***Attorneys for Defendant Global Power
Equipment Group Inc.***

Certificate of Service

I certify that a copy of this document was served by delivery to all other parties in this case entitled to receive such notification through this court's CM/ECF system on April 6, 2016:

/s/ Rachel Kingrey

Rachel Kingrey